Criminal Misc. No. 32134-M of 2007

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.

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Criminal Misc. No. 32134-M of 2007
Date of decision: December 13, 2007.

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Sohan Lal Sarpanch son of Chamela Ram, resident of Village Mukarpur, Tehsil Thanesar, District Kurukshetra.

Petitioner.

Versus

The State of Haryana.

Respondent.

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Before: Hon'ble Mr. Justice R.S.Madan.

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Present: Shri N.G.Sharma, Advocate, for the petitioner.

Shri P.M.Anand, Additional Advocate General, Haryana for the respondent.

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R.S.Madan, J (Oral)

The present petition under Section 482 of the Code of Criminal Procedure, has been filed by Sohan Lal, Sarpanch, resident of Village Mukarpur, for setting aside the order dated 9.02.2007 (Annexure P-2) passed by the learned Sessions Judge, whereby the revision petition filed by the petitioner against the framing of the charge sheet (Annexure P-1), has been dismissed. It was also observed that FIR No. 169 dated 6.6.2003, registered under Section 409 of the Indian Penal Code, at Police Station Sadar, Thanesar, has been registered against him and that the petitioner is not entitled to derive any benefit from the Rules 11(3) of the Haryana Panchayati Raj Finance, Budget, Accounts, Audit, Taxation and Work Rules, 1966 Chapter III (Structure of Accounts). It is contended by the counsel for the petitioner that in case the Sarpanch of the Village kept

in his custody an amount exceeding more than Rs. 5000/- as cash in hand than he shall be liable to pay interest at the rate of 21% per year.

It is pertinent to mention here that charges against the petitioner were framed on 7.5.2005 by the learned Additional Chief Judicial Magistrate, Kurukshetra, which is reproduced as under:-

> *"That in the year 2000 you being Sarpanch of Village Kukarpur, kept Panchayat funds cash in hand i.e. Rs.73481/- in May, Rs. 52600/- in June, Rs. 22077/- in July, Rs. 26723/- in August, Rs. 36723/- in September and Rs. 61723/- in October, 2000 and used the same for his own use and thereby committed an offence punishable under Section 409 of the Indian Penal Code and within my cognizance.*
>
> *And I hereby direct that you be tried by this Court on the aforesaid charge."*

Aggrieved by the framing of charge, the petitioner filed revision petition before the Additional Sessions Judge (Ad hoc) Fast Track Court, Kurukshetra, which was dismissed vide order dated 9.2.2007.

It was contended by the learned counsel for the petitioner that the case of the petitioner is not covered by Section 409 of the Indian Penal Code as he was not a public servant, and, therefore, he should not be held liable for the offence punishable under Section 409 of the Indian Penal Code.

The main contention of the learned counsel for the petitioner before the learned Additional Sessions Judge, Kurukshetra was that development work was going on and, therefore, the amount had to be kept in cash for making payments to the various persons from time to time. Merely that the petitioner has kept the cash in hand as Sarpanch beyond Rs. 5000/-, it would amount to breach of Rules but it would not attract the penal consequence.

On the other hand, the learned Additional Advocate General, Haryana referred to Chandgi Ram and others Versus State of Haryana-

2006(3) R.C.R.(Criminal) 880 wherein it was observed as under:-

> ***"Section 409- Prevention of Corruption Act, 1988, Section 13(2)-accused Sarpanch of Village- Selling trees of Panchayat for Rs.11,000/- but deposited the amount in Panchayat account after 19 months. Accused guilty of temporary embezzlement. Case registered after the deposit of the amount".***

In the case in hand, an amount of more than Rs. 3,00,000/- (Three lacs) was kept by the petitioner with him, the detail of which has already been given in the charge sheet framed against the petitioner, for more than one year and did not deposit the same in the account of the Panchayat. Thus it is clear that the petitioner is in the habit of keeping the amount of the Gram Panchayat since May, 2000.

Even in the Rules, which have been cited by the learned counsel for the petitioner, it is proved that a sum not exceeding Rs. 5000/- may be kept in the custody of the Sarpanch as cash in hand. The case of the petitioner is squarely covered by the ratio of Chandagi Ram's case (supra). It can be safely inferred that the petitioner has committed the offence of embezzlement. It is during trial, the matter could be decided whether it is temporary embezzlement of the Panchayat amount.

Thus, from the authority cited by the learned Additional Advocate General, Haryana, it is clear that for keeping a sum more than Rs. 5000/- as cash in hand for more than one year by the petitioner, he cannot derive the benefit of the Rules referred to in the earlier part of the judgment. This was not the single occasion that the amount, which was meant for different development purposes, was kept by the petitioner as a cash in hand, does not justify his action.

As a result of my above discussion, I find no merit in this petition. Accordingly, the same is dismissed.

December 13, 2007. **(R.S.Madan)**
Malik **Judge**